

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**BUD'S WOODFIRE OVEN LLC D/B/A *
AVA'S PIZZERIA**

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Respondent

and

*

Case 5-CA-194577

RALPH D. GROVES, AN INDIVIDUAL

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Charging Party

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**RESPONDENT'S MOTION FOR LEAVE TO FILE AMENDED APPLICATION
FOR AWARD OF FEES AND EXPENSES PURSUANT TO NLRB RULES AND
REGULATIONS SECTIONS 102.143 – 102.155**

NOW COMES Respondent, Bud's Woodfire Oven, LLC d/b/a Ava's Pizzeria (the "Respondent" or "Applicant" or "Ava's Pizzeria") by, Adam E. Konstas, Leslie R. Stellman, and the law firm PESSIN KATZ LAW, P.A., its undersigned counsel, and respectfully submits this Motion for Leave to File an Amended Application for Award of Fees and Expenses in the above-captioned action pursuant to Sections 102.143 – 102.155 of the Rules and Regulations of the National Labor Relations Board (the "Board"), and states as follows:

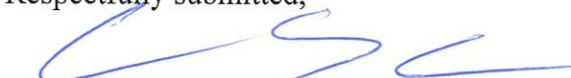
- 1) On September 10, 2019, Respondent submitted its Application for Award of Fees and Expenses (the "Application").
- 2) The Application contained a summary of the procedural history of the case and Respondent's arguments as to why the General Counsel's position that Groves engaged in protected concerted activity was not justified from the beginning of the case. The Application was supported by Confidential Exhibit A, which contained Respondent's financial information (consisting of a complete tax return and balance sheet) and which

by the Owner of Respondent, Chris Agharabi, along with an Amended Exhibit B.¹ The Amended Application for Award of Fees and Expenses relates back to the earlier filed Application because the substance of the procedural history and argument in support of the Application has not changed – it only remediates alleged technical deficiencies.

- 7) Respondent submits that the alleged omissions are purely technical and should not prevent the recovery of fees and expenses by Respondent given the procedural history of this case.
- 8) Specifically, looking to the substance of the Application and considering the record in the case before the Region, the Administrative Law Judge, and the Board, it is clear that the General Counsel's position on the issue of whether Groves engaged in protected concerted activity was not substantially justified from the commencement of the matter and that an award of fees for the portion of the case related to that issue is appropriate.

WHEREFORE, the Respondent, Bud's Woodfire Oven, LLC d/b/a Ava's Pizzeria respectfully requests that the Board accept the Amended Application for Award of Fees and Expenses along with Amended Exhibit B in the above-captioned action pursuant to Sections 102.143 – 102.155 of the Rules and Regulations of the National Labor Relations Board and grant an award of fees and expenses as requested.

Respectfully submitted,



Adam E. Konstas (Bar # 18957)

Leslie Robert Stellman (Bar # 01673)

¹ Upon further review of Respondent's itemization of fees previously submitted in Exhibit B, the month of August, 2017 was inadvertently omitted from the previous submission. Accordingly, Amended Exhibit B was expanded to include the month of August, 2017, resulting in a slight increase to the fees and expenses claimed.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the Respondent's Motion for Leave to File Amended Application for Award of Fees and Expenses was served this 16th day of October, 2019, to:

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